pointment of expectations; later it was put upon the ground that, during the marriage treaty, there existed an inchoate dower interest. *Chandler* v. *Hollingsworth*, *supra*. The accepted view at present, however, is that during the betrothal the parties stand in so close and confidential a relationship as to give rise to a duty to exercise the utmost good faith. The intended wife has the same interest as the husband in the family establishment and in all that concerns its future support and maintenance. Such an undisclosed conveyance is therefore inconsistent with the good faith and honesty which the relations of the parties demand. *Arnegaard* v. *Arnegaard*, 7 N. Dak. 475.

The question has come up as to how far other circumstances, as a desire to make provision for children by a former marriage, should have weight in equity to remove the imputation of bad faith. It has been held that a reasonable provision for the grantor's children will be protected so long as it is not done solely to defeat the dower rights of the intended wife. *Fennessey* v. *Fennessey*, 84 Ky. 519. In general, however, courts treat mere non-disclosure as conclusive. It is to be remembered that even if the stricter view be adopted, a man may still make whatever provision he thinks fair for his children. Only in carrying out this moral duty he must not disregard the higher duty of good faith with his intended wife, and must at least inform her of his intention. Again, if such qualifications are considered, it is extremely difficult to draw a satisfactory line. Whether this disadvantage is outweighed by the possibility of injustice in a few cases is only a question of expediency. On either view, however, the decision in the principal case may be supported.

Restrictions upon the Cy-Pres Doctrine. — An interesting question of how far the *cy-près* doctrine will be applied was involved in a late English decision. A testator bequeathed certain property to trustees to pay the income to his wife for life, remainder to his son for life, and, in the event of his son's dying without issue, the property to go to the Draper's College, a charitable institution. After the testator's death, but before the death of his son without issue, the college ceased to exist. The court held that the fund should be applied *cy-près*. *In re Soley*, 17 Times L. R. 118. The case would seem clearly right were it not that a distinction has been made as to whether the gift has ever become vested in the institution. If a general charitable intention can be inferred, but the institution chosen as the mode of effecting this charitable purpose ceases to exist after it has become entitled to the fund, the intention will be carried out *cy-près*. *In re Slevin*, [1891] 2 Ch. 236. But where the institution ceases to exist during the testator's lifetime, it has been treated as an ordinary lapsed legacy, and the doctrine of *cy-près* has not been applied. *In re Ovey*, 29 Ch. D. 560. The authority upon which this distinction rests is at least questionable. The modern cases that have developed it are based upon a misconception of several earlier cases where obviously the doctrine of *cy-près* had no application because the testator in them showed no general charitable intent, but only a desire to benefit a particular institution. 1 Jarman on Wills, 4th ed. 246. However, although the later cases do not refer to it, there is a still earlier case which bears out the distinction. *Clark* v. *Foundling Hospital*; Highmore on Mortmain, 552.

Whether on principle the distinction is to be considered sound depends largely upon the views that are held as to the desirability of the *cy-près* exception. Those who look upon it as a means of carrying into effect the obvious intent of a testator, and, as such, a rule worthy of the fullest application, cannot but regard this distinction as arbitrary and unjust. On the other hand, the holders of the opposite view suggest that to apply the *cy-près* rule where the fund has once vested in a charity is only to leave the property in the hands of the present holder, whereas, where the object fails in the testator's lifetime, to apply this doctrine is to deprive the heir of property which has naturally fallen to him. But when it is remembered that the only object of the rule is to do justice to the testator's expressed wishes, it would seem that the distinction is hardly valid.

The principal case may, however, be supported even under the stricter rule. The interest which the college had at the testator's death was a contingent remainder, and, although contingent, the remainder was a vested property right. So it is possible to say that the fund had become vested in charity before the institution ceased to exist.

DAMAGES IN AN ACTION FOR DECEIT. — Until recently the authorities in this country were practically unanimous in holding that the damages in an action on the case for a fraudulent misrepresentation were the same as in an action for a breach of warranty. *Morse* v. *Hutchins*, 102 Mass. 439; *Page* v. *Parker*, 43 N. H. 363. However, in 1889 the Supreme Court of the United States, with hardly any discussion of the authorities, held that the measure of damages was, not what the plaintiff might have gained had the representation proved true, but what he had lost by being deceived into the purchase. *Smith* v. *Bolles*, 135 U. S. 125. The doctrine of this decision has since been applied in a few cases. *Rockefeller* v. *Merritt*, 76 Fed. Rep. 909 (C. C. A. 8th Cir.); *Hegh* v. *Berrett*, 148 Pa. St. 263. It also prevails in England. *Peek* v. *Derry*, L. R. 37 Ch. D. 541. On the other hand, most of the state courts that have since passed upon the question have adhered to the older rule. *Gustafson* v. *Rustemayer*, 70 Conn. 125; *Fargo Gas Co.* v. *Fargo Gas & Electric Co.*, 59 N. W. Rep. 1066 (N. D.). In this state of the law a recent decision of the Supreme Court of the United States, in which the question is adequately considered, is particularly valuable. *Sigafus* v. *Porter*, 21 Sup. Ct. Rep. 34. In an action for deceit the circuit judge instructed the jury that "the measure of damages is the difference between the value of the property as it proved to be and as it would have been as represented." The Supreme Court adopted the rule of *Smith* v. *Bolles*, *supra*, and held this to be a reversible error. Justices Brown and Peckham dissented.

Aside from the numerical weight of authority it is difficult to see any justification for the decisions *contra* to that of the principal case. In an action for a tort such damages are recoverable as are the natural and probable consequences of the tortious act. Where a party is induced to purchase property by another's fraudulent misstatements the vendor's wrongful act is not that the representations he made were false, but that he made false representations. Because of these fraudulent misrepresentations the plaintiff parts with a certain amount of money and receives in return certain property. Consequently the damages awarded should